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March 12.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.

ABDUL SHAKUR (PLAINTIFF) v. MENDAI (DEFENDANT).*

Pre-emption—Wajib-ul-arz—Construction of document—Meaning of the term "hissadaran shikmi."

Held that the expression "*hissadaran shikmi*" as used in the clauses of a wajib-ul-arz dealing with various classes of persons who were entitled to pre-emption in preference to strangers, did not necessarily imply any idea of sub-ordination, but was rightly considered applicable to persons who were co-sharers in the particular *khata* of the *patti* in which the land sold was situated.

THE facts of this case sufficiently appear from the judgment of the Court.

Maulvi *Muhammad Ishaq*, for the appellant.

Pandit *Sundar Lal* and Babu *Jiwan Chandra Mukerji* for the respondent.

BANERJI, J.—This appeal arises in a suit for pre-emption brought on the basis of the wajib-ul-arz. The wajib-ul-arz confers the right of pre-emption on seven classes of persons, each class having a preferential right over the class next following. The first two classes are composed of persons who are related to the vendor. The remaining classes are co-sharers of the vendor. The third class of pre-emptors is described as *hissadaran shikmi*. The fourth is the lambardar of the *behri* or *patti*. The fifth is a co-sharer in the *patti*. The sixth and seventh are respectively the lambardars and co-sharers in the village. The plaintiff claims as a pre-emptor of the third class. He is a co-sharer of the vendor in the same *khata*, and he says that he comes within the third category of pre-emptors mentioned in the wajib-ul-arz. The Courts below were of opinion that by the words *hissadaran shikmi* were meant co-sharers in the same *khata*, and, as the plaintiff is admittedly a co-sharer of the vendor in the same *khata*, those Courts held that he had a preferential right of pre-emption to that of the vendee who is a co-sharer in the *patti*. On appeal to this Court the decrees of the Courts below were set aside, the learned Judge of this Court being of opinion that the word *shikmi* implies "subordination of some kind," and that a co-sharer *shikmi* must mean some co-sharer who holds in subordination to the co-sharer whose property is sold. I am unable to

* Appeal No. 41 of 1900 under section 10 of the Letters Patent.

agree with this view. The word *shikmi* is derived from the word *shikam*, which means the belly, and its primary meaning is "inclusion." So that the word *shikmi* does not necessarily imply subordination. This was in a way conceded by Mr. *Sundar Lal* on behalf of the respondent. The illustrations which Mr. *Sundar Lal* put before us as showing what was meant by *hissadaran shikmi* do not imply any kind of subordination to the co-sharer whose share is sold. He put the case of a person buying an isolated piece of land from a co-sharer in the same *khata*. Such a purchaser certainly is in no sense subordinate to his vendor. When the co-sharers who caused recitals as to the custom of pre-emption to be recorded in the wajib-ul-arz, declared that *hissadaran shikmi* would have a right of pre-emption, they must have meant some co-sharers who were not necessarily in the relation of subordination to the co-sharer who might sell his share. There can be no doubt that at the time when the wajib-ul-arz was prepared, the co-sharers in the village were referring to the state of things which existed in the village at that time. The intention was to exclude from each group of co-sharers persons who were strangers to that group. Thus we have co-sharers in the *patti* as persons who would exclude co-sharers in the village. There can be no doubt that co-sharers *shikmi* were intended to mean some co-sharers who were nearer to the vendor than the co-sharers in the *patti*. In the village in question it appears that each *patti* or *behri* is sub-divided into *khatas*, each *khata* representing a separate unit for the payment of Government revenue as between the co-sharers in the *patti*. There is no other class of co-sharers in the village who could have been meant as being co-sharers *shikmi* than co-sharers in the *khata*; and although any doubt in the matter would have been impossible had the word "*khata*" been used instead of "*shikmi*," it seems to me that the intention evidently was to give a preferential right of pre-emption to co-sharers in the *khata* over co-sharers in the *patti*, the co-sharers in the *khata* being denoted in the wajib-ul-arz as *hissadaran shikmi*. It is well known that the various clauses of a wajib-ul-arz are not recorded with as much precision as is proper and desirable. We have therefore in each case to gather the intention from the whole context and the surrounding circumstances. Having regard

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to the circumstances of the village in question, it seems to me that the Courts below were right in holding that *hissadaran shikmi* meant co-sharers in the *khata*, and that therefore the plaintiff had a preferential right of pre-emption over the vendee, who is not a co-sharer in the *khata*. I would allow the appeal, set aside the decree of this Court and restore that of the Court below with costs.

STRACHEY, C.J.—I am of the same opinion. The wajib-ul-arz, so far as pre-emption is concerned, is, as often happens, not expressed in the clearest language. But I think that the clause now in question is, in certain respects at all events, reasonably clear. The framers of it intended to give a right of pre-emption to co-sharers falling within certain groups or categories. The co-sharers in the village generally were placed last in order, they having a right of pre-emption in preference to strangers. Before them a preferential right of pre-emption was given to co-sharers forming a sub-division of co-sharers in the village; that is, to co-sharers in the same *patti* with the vendor. Before that class came the class now in question, which is described as "*hissadaran shikmi*," and it is at all events, I think, clear that these words must refer to some sub-division of the class of co-sharers in the same *patti*, just as co-sharers in the same *patti* form a sub-division of the last class of co-sharers in the village. The only question is what sub-division of co-sharers in the same *patti* is to be understood by the expression "*hissadaran shikmi*." No satisfactory explanation, in my opinion, has been given; no instance of any sub-division that can possibly have been intended, except the ultimate sub-division of the village for revenue purposes, that is, the *khata*, into which the *pattis* are sub-divided. It appears to me that *hissadaran shikmi* means co-sharers in the same *patti* who are also co-sharers in the same *khata* or sub-division of that *patti* with the vendor. Now that interpretation of the words is fully consistent with the dictionary meaning of the word *shikmi* which has been discussed so much. The primary idea, as Mr. Justice Banerji has said, is inclusion; that is to say, the *hissadaran shikmi* must in some way or other be connected with the vendor by reference to inclusion in something which contains them both, such as, in the case before us, in this *khata*

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in which the shares of both are included. The idea of subordination to which Mr. Justice Aikman refers appears to have been derived, so far as I can ascertain, from the primary idea of inclusion, as where a sub-tenant is called a *shikmi* apparently because his interest is included in, and forms part of, a tenancy from which it was created. I agree in making the order proposed by my brother Banerji.

Appeal decreed.

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March 13.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.

DALLU MAL AND ANOTHER (DEFENDANTS) *v.* HARI DAS (PLAINTIFF).*

Execution of decree—Civil Procedure Code, section 283—*Decree against one only of several co-heirs of deceased debtor—Transfer by judgment-debtor of property belonging to himself and co-heirs—Plea of jus tertii raised by transferees.*

The plaintiff obtained a money decree for a debt due by a deceased Muhammadan against one only of several heirs of the deceased. In execution of this decree an attachment was made of certain immovable property formerly of the original debtor; but prior to such attachment the judgment-debtor had by an oral agreement transferred such property to other persons and put them in possession.

Held, that it was open to the transferees in possession to raise the defence which their transferor could have raised, namely, that only the rights and interests of the judgment-debtor himself were liable to attachment and sale in execution of the decree, and not the rights and interests of the co-heirs of the judgment-debtor. *Jafri Begam* v. *Amir Muhammad Khan* (1), *Nathmal Das* v. *Tajammul Husain* (2) and *Seth Chand Mal* v. *Durga Dei* (3) referred to.

THE facts of this case sufficiently appear from the judgment of the Chief Justice.

Babu *Jogindro Nath Chaudhri* and Babu *Satya Chandra Mukerji* for the appellants.

Pandit *Sundar Lal*, Munshi *Jang Bahadur Lal* and Munshi *Gokul Prasad*, for the respondent.

STRACHEY, C.J.—This is a suit under section 283 of the Code of Civil Procedure to establish the right of the plaintiff to attach and bring to sale certain immovable property in

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* Second Appeal No. 649 of 1898 from a decree of R. Greeven, Esq., District Judge of Benares, dated the 10th October 1898, modifying the decree of Babu Mohan Lal, Subordinate Judge of Benares, dated the 18th May 1898.

(1) (1885) I. L. R., 7 All., 822. (2) (1884) I. L. R., 7 All., 36.
(3) (1889) I. L. R. 12 All., 313.